

REMARKS

Status of the Claims

Claim 1-5 and 7 are currently amended to clarify claim language and where applicable, remove improper multiple claim dependency. No new matter has been added.

Upon entry of this amendment, elected and pending claims 1-8 should be examined.

Objections under 37 C.F.R. § 1.75(c)

Claims 5-8 are subject to objection for improper multiple claim dependency. Office Action, item 1, page 2. Accordingly, Applicants amended claims 3-5 and 7 to remove improper multiple dependencies.

Rejections under 35 U.S.C. § 102

Claims 1-4 are rejected for alleged anticipation by Lorant, U.S. Patent No. 6,465,402. *Id.*, item 1, at pages 3-5. Specifically, the PTO alleges that Lorant discloses a cosmetic composition comprising apricot oil. *Id.* at page 4. In so alleging, the PTO states “The apricot oil would have been expected to comprise vegetable oil bodies because the oil is derived from apricot oil seeds which inherently comprise vegetable oil bodies.” *Id.* Applicants respectfully traverse this rejection.

In order to anticipate, a reference must disclose, either inherently or expressly, each and every element of the claim. MPEP § 2131. In the case of an allegedly inherent disclosure, the missing element must be necessarily present. “The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. Inherency, however, may not be established by probabilities or possibilities.” MPEP § 2112.

As explained below, Lorant does not disclose, inherently or explicitly, a cosmetic that is comprised of intact oil bodies (oleosomes). Accordingly, Lorant could not anticipate present claims 1-4.

Plant seed oils are used in a variety of applications, such as food, detergent, and cosmetics industries. In order to obtain the plant oils for these applications, plant seeds are crushed or pressed, and subsequently refined using processes such as organic extraction, degumming, neutralization, bleaching and filtering. Thus, because the objective is to extract pure oil, harsh extraction procedures cause the oil bodies to lose their structural integrity and the oil bodies (oleosomes) cease to exist. The resultant plant oil, therefore, does not contain oil bodies. Accordingly, emulsions formulated from plant oils generally do not comprise intact oil bodies, and therefore Lorant's composition does not necessarily comprises intact oil bodies, particularly when Lorant neither teaches nor suggests the presence of such oil bodies.

In contrast, the present application provides methods and compositions comprising intact oil bodies. As explained in Applicants' specification, oil bodies refer to a discrete structure within the seeds of oilseed crops. *See* specification, e.g., published paragraph number [0006]. Because these oil body structures are fragile, particularly during oil extraction, assignee SemBioSys Genetics, Inc. specializes in technology devoted to maintaining intact oil bodies and preparations for isolating and using same. Because the structural integrity of oil bodies are crucial to the present disclosure, Applicants indicate specifically that the instant emulsions are made from oleosomes, or intact oil bodies, and cites Applicants' own patents for producing such intact oil bodies. *See* specification, e.g., published paragraph numbers [0006], [0007], [0020], [0021]; Examples 1-11. Thus, and unlike the cited art, Applicants' methodology uses intact oil bodies. For this reason alone, the anticipation rejection is improper and should be withdrawn.

Finally, the PTO rejects claim 3 as allegedly redundant with claim 4. That is, the PTO asserts that "lotion" and "cream" are substantially synonymous. Office Action, page 5. Applicants respectfully traverse the grounds for this rejection because lotion and cream are not synonymous, as evidenced by the large number of commercially available products that come in both cream and lotion formulations. It is generally accepted that lotions and creams differ based on their water content, as well as thickness. That is, while both lotion and cream comprise oil mixed with water, a cream is thicker than a lotion and maintains its shape when removed from its container. Accordingly, because cream and lotion are well-accepted terms in the cosmetic industry and are not synonyms, the rejection should be withdrawn.

Double Patenting Rejections

The PTO advises that, "should claim 3 be found allowable, [then] claim 4 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof." Applicants request that this rejection be held in abeyance until there is an indication of allowable subject matter.

CONCLUSION

In view of the foregoing, Applicants submit that the present claims are in allowable condition, and they request an early indication to this effect. Examiner Greene is invited to contact the undersigned directly, should he feel that any issue warrants further consideration.

Respectfully submitted,

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The Commissioner is hereby authorized to charge any additional fees, which may be required under 37 C.F.R. §§ 1.16-1.17, and to credit any overpayment to Deposit Account No. 19-0741. Should no proper payment accompany this response, then the Commissioner is authorized to charge the unpaid amount to the same deposit account. If any extension is needed for timely acceptance of submitted papers, then applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorize payment of the relevant fee(s) from the deposit account.